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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 12, 1999

BY HAND DELIVERY

Ms. Margalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW, TW-B204
Washington, DC 20554

Re: Petition of The Hearst Corporation, Media General, Inc., Gannett Company, Inc., and Tribune Company in Support of the Newspaper Association of America's Emergency Petition for Relief – MM Docket 98-35/MM Docket 96-197

Dear Ms. Salas:

Transmitted herewith on behalf of The Hearst Corporation, Media General, Inc., Gannett Company, Inc. and Tribune Company an original and eleven (11) copies of a Petition in Support of the Newspaper Association of America's Emergency Petition for Relief.

If you have any questions regarding the enclosed, please contact this office.

Sincerely,

Jennifer L. Blum

Enclosures

No. of Copies rec'd 0+11
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules Pursuant to Section 202 of the Telecommunications Act of 1996	)	MM Docket 98-35
	)	
Newspaper/Radio Cross-Ownership Waiver Policy	)	MM Docket 96-197

TO: The Commission

PETITION BY THE HEARST CORPORATION, MEDIA GENERAL, INC., GANNETT COMPANY, INC. AND TRIBUNE COMPANY IN SUPPORT OF THE NEWSPAPER ASSOCIATION OF AMERICA'S EMERGENCY PETITION FOR RELIEF

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November 12, 1999

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SUMMARY

The Hearst Corporation, Media General, Inc., Gannett Company, Inc. and Tribune Company, as Petitioners, file this Petition in support of the Newspaper Association of America's Emergency Petition for Immediate Relief from the Federal Communications Commission Newspaper/Broadcast Cross-Ownership (NBCO) Rule.

On August 5, 1999, the Commission announced its decision to relax its local television ownership rules. Petitioners applaud the Commission's recent recognition that any perceived reduction in competition or diversity that may or may not arise from co-ownership should be balanced against the tremendous benefits to both the industry and the public that clearly result from co-ownership. Petitioners demonstrate in their Petition that the Commission's analysis in this regard is analogous to the arguments made by Petitioners in their comments before the Commission in the 1998 Biennial Review proceeding in support of the repeal of the NBCO restrictions. In fact, the Commission now recognizes that, instead of a negative effect, a loosening of ownership rules may create pro-competitive efficiencies and economics of scale in the marketplace, the result of which are improved services, products and programming. With the protection of the Commission's existing structural regulation, the Commission has also confirmed that the cross-ownership of properties that results from the changes in the television rules is not a threat to diversity in the marketplace.

In addition to verifying Petitioners' arguments as to the state of competition and diversity in the marketplace, the Commission's decision regarding local television rules has the concomitant effect of highlighting the outdated and discriminatory nature of the NBCO rule. By maintaining the NBCO rule in the current de-regulatory environment, the Commission continues to restrict the newspaper industry's ability to provide competitive products. This unfair market imbalance is not

only unduly burdensome on the newspaper industry, but also threatens the very efficiency and diversity that the Commission is so vigorously attempting to protect and enhance.

When promulgated, the local television ownership and NBCO rules were based on the same underlying predicate of protecting the public interest. Likewise, the arguments for loosening both the local television rules and the NBCO rule are based on the same predicate of increased efficiencies, increased competition, and better consumer products. Petitioners applaud the Commission's initial efforts to spur competition through deregulation of the local television rules and, for all the reasons below, strongly encourage the Commission to continue its mission by repealing the NBCO rule.

I. STATEMENT OF IDENTITY AND INTEREST

Pursuant to Sections 1.41 and 1.401(a) of the Federal Communications Commission's Rules (the "Commission"), the Hearst Corporation, Media General, Inc., Gannett Company, Inc., and Tribune Company ("Petitioners") file this petition in support of the Newspaper Association of America's ("NAA") Emergency Petition to immediately repeal the commission's rule prohibiting the common ownership of a daily newspaper and a television or radio broadcast station in the same market.[1]

The Hearst Corporation ("Hearst") is a privately-held company with broad communications interests, including newspapers, magazines, publishing, and broadcast.[2] The Hearst Newspaper Division publishes twelve daily newspapers – in both major cities and smaller markets – and eighteen weekly newspapers in Texas, Michigan, and New York. Hearst's leading newspapers include the Houston Chronicle, the San Francisco Examiner, the San Antonio Express-News, the Albany Times Union and the Seattle Post-Intelligencer. Hearst Newspapers also maintains a Washington news bureau.

Media General, Inc. ("Media General") is an independent, publicly-owned communications company situated primarily in the Southeast. It is the publisher of the Richmond Times-Dispatch , The Tampa Tribune, the Winston-Salem Journal and 18 other daily newspapers. It additionally publishes nearly 100 weekly and related periodicals whose combined weekly

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[1] See 47 C.F.R. § 73.3555(d). See also Emergency Petition for Relief of the Newspaper Association of America (1999)("NAA Emergency Petition").

[2] Hearst's primary broadcast interest is in television. Most of these properties -- 26 network-affiliated stations -- are held by Hearst-Argyle Television, a publicly-held company, of which Hearst has a controlling interest.

circulation approaches one-half million. Media General also has interests in broadcast television, recycled newsprint production, and diversified information services.

Gannett Company, Inc. ("Gannett") is the controlling owner of 21 broadcast television stations in the United States. The company is also the publisher of 74 daily newspapers, including its flagship newspaper, USA Today. Gannett publishes daily newspapers in 38 states, including suburban and neighboring city newspapers in many areas close to major cities (such as New York City, San Francisco, Los Angeles, Philadelphia and Seattle).

Tribune Company ("Tribune") is the corporate parent of 18 major-market television stations, four radio stations and four daily newspapers. Tribune has had a long and active role in newspaper publishing and in radio and television broadcasting. It has published its flagship newspaper, the Chicago Tribune, since 1847. Its first AM station, WGN, signed on in Chicago as an original "clear channel" signal in 1924 and three of its television stations recently celebrated 50 years of continuous service.

Together Petitioners file as interested parties in support of the NAA's Emergency Petition for relief from the newspaper/broadcast cross-ownership rule (NBCO) to ensure that the newspaper industry's ability to compete within the communications industry is not unfairly or unnecessarily restricted. Petitioners submit this filing in substantial part in reaction to the Commission's own conclusions in its local television ownership proceeding.[3] Petitioners submit that the resources and expertise of daily newspapers play an integral role in the development of new media and innovative services. As with co-ownership of local television stations, Petitioners believe that, if permitted to own newspapers and broadcast stations in the same geographic

[3] Report and Order (Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules), FCC 99-209 (1999) ("Report and Order").

location, these companies would create economies of scale that would benefit the public in the form of improved products, improved news and information, and increased competition. Petitioners made similar arguments in their Comments filed before the Commission in its Biennial Review proceeding. Those arguments are bolstered by the Commission's own recent decision to relax the local television ownership rules. Petitioners support this step toward deregulation and file this Petition as interested parties to encourage continued progress in this area.

II. PETITIONERS SUPPORT FURTHER DEREGULATION CONSISTENT WITH THE COMMISSION'S ARGUMENTS FOR AND DECISION TO RELAX ITS LOCAL TELEVISION OWNERSHIP RESTRICTIONS

On August 5, 1999, the Commission announced its decision to relax its local television ownership rules in response to § 202(c)(2) of the Telecommunications Act.[4] In determining to relax local television ownership rules, Petitioners commend the Commission's recognition of both the recent growth in the competitive and diverse nature of the communications media marketplace and the public interest benefits that will result from the relaxation of its ownership rules (i.e., increased economic efficiencies and improved programming).

The Commission's analysis of the current marketplace in relation to the public interest benefits resulting from the relaxation of its local television ownership rules is analogous to the arguments made by Petitioners in their comments before the Commission in the 1998 Biennial Review proceeding in support of the repeal of the newspaper/broadcast cross-ownership (NBCO) restrictions. In its August 5th, 1999 Order on the local television rules, the Commission establishes its desire to balance the competing interests which "allow broadcasters and the public to realize additional economic efficiencies and public interest benefits generated by common

[4] Report and Order, FCC 99-209 (1999).

ownership" with its interest in ensuring "that diversity and competition are protected."[5] The Commission determined that the new, relaxed television ownership rules will continue to foster both diversity[6] and marketplace competition while also providing numerous additional public interest benefits.[7]

The Commission's conclusions on the local television ownership rules confirm the arguments made by Petitioners in their previous Comments that the threats to diversity and competition on which the NBCO was premised are not present.[8] Indeed, the emergence of new technologies in the marketplace has not only increased both diversity and competition, but also negated any need for the strict restrictions on ownership that may have existed at the time of their adoption. In fact, as the Commission noted in its recent Report and Order, the public interest demands relaxation of these very rules in order to create the economic efficiencies that spur competition and diversity in the quality of programming and products available to the consumer.[9]

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[5] Id. at 21.

[6] Id. at 13.

[7] Id. at 17; see also NAA Emergency Petition at 11-12 (quoting the Commission's 1999 Television Ownership Order).

[8] Comments (Review of the Commission's Broadcast Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996) (1998), Hearst Corporation 8 ("Hearst Comments"; Newspaper Association of America 17-18 ("NAA Comments"); Gannett Co., Inc. 7-8 ("Gannett Comments"). Although the Commission historically has based its broadcast ownership restrictions on the "public interest" of fostering diversity and protecting competition, it is noteworthy that the creation of the newspaper/broadcast cross-ownership restrictions was not actually based on any factual evidence of harm to diversity or competition from existing newspaper/broadcast combinations. Instead, the NBCO rule was promulgated out of a prospective concern that diversity and competition might be best fostered by restricting local newspapers' access to the broadcast market. Hearst Comments at 8; NAA Comments at 17-18.

[9] Report and Order, supra note 1, at 14.

One year ago, Petitioners wrote that, as the Commission and Congress have started to loosen other ownership rules, the anachronistic NBCO rule has remained intact.[10] Ironically, in addition to confirming Petitioners' arguments as to the state of the marketplace, the Commission's decision to relax the local television ownership has also had the concomitant effect of making the NBCO rule even more outdated -- as an increasing number of diverse local media interests are unleashed to compete with newspapers for local media investment.

Petitioners applaud the Commission's deregulatory stance regarding local television ownership rules, but strongly recommend, for all of the facts on the record and the reasons the Commission stated in its own Report and Order as well as in NAA's Emergency Petition, that these steps cannot be taken without also repealing the NBCO rule. Retaining this rule creates significant inconsistencies in the Commission's own regulations on ownership, threatens the public interest goals of diversity and competition that the Commission is striving to foster and protect, and places similarly situated parts of the same communications industry in an unfair and uncompetitive position.

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[10] See Comments (Review of the Commission's Broadcast Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996), Cox Broadcasting, Inc. and Media General, Inc. 27-29 ("Cox/Media General Comments"); Hearst Comments at 25. As Hearst further stated in its Comments, "Indeed, as the newspaper/broadcast cross-ownership rule was the last to be promulgated, it has also yet to see any relief." Id. at 23-24;

III. THE RETENTION OF A STRICT PROHIBITION ON NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE IS INCONSISTENT WITH THE COMMISSION'S RELAXATION OF ITS LOCAL TELEVISION OWNERSHIP RULES

A. The Commission's Rationale for Relaxing Local Duopoly Rule and Radio/Television Cross-Ownership Rule -- Defining "Public Interest"

The Commission relaxed the local television ownership ("duopoly") rules "to respond to ongoing changes in the broadcast television industry,"[11] and to modify them "consistent with the public interest, convenience, and necessity."[12] The new rule allows common ownership of two stations in the same local market subject to certain conditions. Further, the Commission significantly relaxed its radio/television cross-ownership rule to allow an increased degree of common ownership of these media.[13]

Broadcast ownership rules are generally based on the "twin goals" of promoting competition and diversity. These goals continue to be an integral part of the Commission's definition of the "public interest." In 1964, when the Commission first adopted the duopoly rule, it "[sought] to promote maximum diversification of program and service viewpoints and to

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[11] Report and Order, supra note 1, at 2.

[12] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(d) (1996)("1996 Act"). See also 1996 Act at § 202(h). The proceedings to revise the broadcast ownership rules began with a 1991 Notice of Inquiry ("NOI"). In that Notice, the Commission sought comment on whether the ownership rules should be revised in accordance with the changing broadcast marketplace. Notice of Inquiry (Review of the Policy Implications of the Changing Video Marketplace), 6 FCC Rcd 4961 (1991). Based upon comments received in response to the NOI, the Commission issued a Notice of Proposed Rule Making containing alternative proposals to modify or relax its national and local television ownership rules. Notice of Proposed Rule Making (Review of the Commission's Regulations Governing Television Broadcasting), 7 FCC Rcd 4111 (1992). In 1994, the Commission proposed further changes to the national and local television ownership rules, and the radio/television cross-ownership rule. Further Notice of Proposed Rule Making, 10 FCC Rcd 3524 (1995).

[13] Report and Order, supra note 1, at 2-3, 6.

prevent undue concentration of economic power *contrary to the public interest*."[14] Today, the Commission explicitly recognizes in its Report and Order that the "public interest" requires "striking a balance" between the benefits to the industry and to the public of common ownership -- such as economies of scale and improved service -- particularly at the local level, and a possible reduction in diversity or competition that may or may not arise from common ownership.[15]

Relaxation of the television/radio rules results from extensive evidence of changes in the media marketplace. First, the Commission noted the recent growth in the number and variety of media outlets.[16] According to the Commission, the increase in the number of traditional media outlets and the addition of alternative media, since the promulgation of the ownership rules now indicate a high level of competition in the media marketplace.[17]

Second, the Commission evaluated how relaxation of the rules would affect competition in the media marketplace and determined to relax the local television ownership rules "where the public interest benefits resulting from same-market common ownership outweigh the threat to

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[14] Id. at 8 (quoting Report and Order (Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations), 45 FCC 1476, 1476-77 (1964) (emphasis added)).

[15] Report and Order, supra note 1, at 9.

[16] Id. at 5.

[17] Id. at 14-16 (discussing the emergence of alternative media such as direct broadcast satellite ("DBS") service, digital audio radio satellite ("DARS") service, multichannel multipoint distribution service ("MMDS"), and open video systems ("OVS")). A recently released economic study on the national audience cap also confirms that the media marketplace is highly competitive as a result of new entrants and technologies during the last two decades. See Old Rules and New Rivals: An Examination of Broadcast Television Regulation and Competition, September 1999, prepared by Michael L. Katz with Charles River Associates, Inc. on behalf of ABC, CBS and Fox at 11.

diversity and localism."[18] The Commission recognized that, while simplistically viewed its action might increase consolidation, the Commission also believes that it will also create efficiencies and economies of scale which result in improved services, products and programming, increased competition and diversity, and "effective constraints on the possible exercise of market power by incumbent television broadcasters."[19]

Under the new duopoly rule, joint ownership serves the public interest when co-owned stations use their economic savings to enhance programming.[20] The Commission cited numerous comments from broadcasters with experience operating under same-market television Local Marketing Agreements (LMA) or radio/television combination. Efficiencies of co-ownership include the ability to share studio and office facilities and administrative and technical staffs, the opportunity for increased efficiencies in advertising and promotion, as well as efficiencies in news gathering and sales operations.[21] Broadcasters in same market LMAs explained that benefits from joint ownership include first-time presentation of local news on the brokered station, change of the brokered station format from infomercials to programming better suited to the public interest, the brokered station's acquisition of a network affiliation, and improved news and public affairs programming on both stations in the arrangement.[22]

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[18] Report and Order, supra note 1, at 5. Some Commenters in the local television ownership proceeding feared that greater consolidation in the broadcast industry would threaten diversity and make it more difficult for new entrants to enter the media industry. Id. at 7-8. The Commission responded to these concerns by noting the adoption of the "new entrant" bidding credit to ensure greater minority participation in the media. Id. at 8. Additionally, the Commission will monitor the effects of the relaxed rules on this industry. Id.

[19] Id. at 14.

[20] Id. at 27-28.

[21] Id. at 17-19.

[22] Id. at 19.

The Commission also cited the significant cost savings associated with joint ownership and estimates of such savings. Specifically, the Commission acknowledged that combining a new station with an existing facility would reduce the fixed operating costs and required capital investment for the new station and would allow two stations to share local news production costs.[23] "These efficiencies can lead to cost savings, which in turn can lead to programming and other service benefits that serve the public interest."[24] Additionally, the Commission found that the consolidation of stations will improve competition and programming quality[25] as competitors in the industry are forced to improve their product to remain competitive with co-owned entities. Finally, under the new rule, weaker television stations may combine with larger stations, "thereby preserving and strengthening these stations and improving their ability to compete."[26]

B. The Commission's Rationale for Relaxing the Local Television Ownership Rules Requires Repeal of the Newspaper/Broadcast Cross-Ownership Rule

The Commission's careful evaluation of the current level of diversity and competition in the media marketplace led to its conclusion that the key factors of its public interest analysis were not threatened by a relaxation of the duopoly and radio/television cross-ownership rules. Indeed, the Commission indicated that the resulting efficiencies and economies of scale create significant benefits to the public so as to "strike the balance" between concern over competition and diversity and the benefits to the industry and to the public.[27] In fact, the Commission's rationale for relaxing the local television ownership rules is precisely the identical public interest argument

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[23] Id. at 18 (citing Pegasus Comments at 9, 13-14).

[24] Report and Order, supra note 1, at 20.

[25] Id. at 14.

[26] Id. at 30.

[27] Report and Order, supra note 1, at 9.

(predicated on virtually identical fact patterns) that mandate the repeal of the NBCO rule. Applying the same public interest standard as in the Report and Order, it is wholly inconsistent for the Commission to maintain the strict NBCO rule.

By relaxing the local television ownership rules, the Commission observed that the addition of new media outlets to the marketplace significantly reduces any threats to competition that might exist from co-ownership. The Commission cited the development and addition of alternative news choices such as multichannel delivery systems that have increased competition and consumer choice.[28] Such growth in viable competition is equally relevant and evident in the context of evaluating the continued existence of the NBCO rule. Previous comments made in the Biennial Review proceeding highlighted the growing contributions of the Internet, cable and satellite television, DARS, MMDS and other technologies that increasingly compete with broadcast sources and newspapers to provide news and information.[29] Just as the development of new and alternative media and the increase in outlets allowed the Commission to relax the local television ownership rules because of decreased threats to competition, this same analysis mandates repeal of the NBCO rule.

In analyzing the competitiveness of the marketplace, the Commission also reviewed the record to examine the degree to which the alternatives in the media market serve as economic substitutes for broadcast television and radio in the advertising market.[30] While the Commission found that there are no definitive studies quantifying the extent to which the various media are

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[28] Id. at 14-15.

[29] Hearst Comments at 9-13; Gannett Comments at 32-33; Comments (Review of the Commission's Broadcast Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act), Ass'n of Local Television 30-31 (1998)("ALTV Comments").

[30] Report and Order, supra note 1, at 15-17.

substitutable for advertising purposes, the Commission concluded that there is enough evidence of intermedia competition for advertising in the market to justify relaxation of the local television ownership rules.[31] The Commission's finding in this regard is consistent with many comments supporting repeal of the NBCO rule in the Biennial Review proceeding. In that proceeding, Commenters provided evidence for the record that, first, certain newspaper advertising is unique and immune to the negative effects of any consolidation in the market that might occur from co-ownership. Second, the record shows that the level of competition for advertising from other forms of media in the marketplace is sufficient to prevent any attempts by newspapers or broadcasters to exercise market power to raise advertising rates, should co-ownership occur.

As Commenters in the Biennial Review proceeding indicated, the fact that expenditures on advertising in local markets with newspapers, broadcasters and others are high does not indicate complete substitutability between them.[32] "While it may be true that these . . . media compete for some advertising dollars, it is also demonstrably true that each provides advertisers unique reasons for buying advertising space or time. . . ."[33] In particular, it is essential to note that classified advertising in newspapers -- which represents 40% of the total advertising dollars spent for the average U.S. daily newspaper -- is not subject to competition from over-the-air television or radio.[34] In addition, it is noteworthy, that other media -- outside broadcast and newspapers -- share a significant percentage of the advertising market. Direct mail and "miscellaneous"

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[31] Id. The Commission correctly assesses in its analysis that it is essential that any consolidation resulting from co-ownership must not diminish sources for advertising.

[32] NAA Comments at 74-76; ALTV Comments at 35.

[33] Hearst Comments at 18; see NAA Comments at 74-76.

[34] Newspaper Association of America, Facts About Newspapers 1999, A Statistical Summary of the Newspaper Industry at 9, www.naa.org 1999 ("Facts About Newspapers"); Hearst Comments at 18.

advertising represent 19.7 and 12.8% of the total advertising dollars expended.[35] Petitioners respectfully submit that the record from the Biennial Review presents significant evidence of the different character of advertising in newspapers, broadcast and other media such that repeal of the NBCO rule would likely have little effect on competition in the advertising market.

Regarding the issue of diversity, the Commission found in its Report and Order that, while co-ownership or consolidation may threaten diversity (while spurring competition), diversity in the marketplace will remain protected through the Commission's amended local television rules and other existing structural regulation.[36] Petitioners share the Commission's concern over diversity and agree that it will remain intact, even with the deregulation of the local television rule and the NBCO rule, so long as some form of structural regulation exists.[37] However, Petitioners respectfully disagree with the Commission's finding that commonly owned outlets cannot produce diverse viewpoints equally as well as separately owned outlets.[38]

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[35] Facts About Newspapers at 9 (Miscellaneous advertising includes weeklies, shoppers, pennysavers and bus and cinema advertising); Hearst Comments at 19; see NAA Comments at 75-82; Gannett Comments at 7, 11-17, 24.

[36] Report and Order, supra note 1, at 10-13.

[37] Id. at 13.

[38] Id. at 12. In this context, the Commission explicitly cited its Report and Order adopting the newspaper/broadcast cross-ownership rule. In fact, the record indicates that if the NBCO rule were repealed, the newspaper editorial board and television editorial board would be run – in most, if not all, circumstances -- from separate and distinct divisions of one company. While economic efficiencies would undoubtedly result from co-ownership, these divisions would operate independently from on another as to editorial comment. See Gannett Comments, Affidavit of Richard A. Mallory (verifying the separate editorial decision-making process at co-owned newspapers and broadcast stations); Cox/Media General Comments at 9-12; Tribune Comments at 9-13; NAA Emergency Petition at 15-16; NAA Comments at 61 (stating that "commonly-owned newspapers and broadcast stations typically maintain separate news and editorial staffs, enjoy operational independence, and compete vigorously with each other and their rivals in the local marketplace"); see also ALTV Comments at 34-36.

Comparing the predicate for the Commission's action on the local television ownership rules to the Biennial Review proceeding, the record is replete with evidence that both the newspaper and broadcast industries would realize the same benefits of joint ownership that the Commission cited in its Report and Order.[39] Co-ownership of a newspaper and broadcast station would increase the resources available for the development of new technology and enhanced coverage and multiply the use of existing resources over more viewers and readers. Commonly-owned properties involving newspaper and broadcast would experience significant cost savings similar to those the Commission cited in its Report and Order.[40] Co-ownership would allow broadcast stations to use a newspaper's considerable newsgathering resources and specialized reporting personnel to provide more comprehensive and diverse coverage of and to the community.[41]

Co-ownership would provide communities with continuing, in-depth coverage of a wide range of local news.[42] For example, co-owned local newspaper and broadcast stations would likely have increased access to reporters and improved meteorological equipment, allowing them to provide localities with more up-to-the-minute reporting of extreme weather conditions like snow storms, tornadoes, hurricanes and any resulting emergency conditions and community responses.[43] Improved economies of scale would also allow for complete coverage of more

[39] See Report and Order, supra note 1, at 17. See also supra text accompanying notes 17-24.

[40] See supra note 20-21 and accompanying text.

[41] Gannett Comments at 28.

[42] Hearst Comments at 20.

[43] Id.; see Comments (Review of the Commission's Broadcast Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act), Chronicle Publishing Company 13, 19 (1998) ("Chronicle Comments").

significant local events such as community forums and farm reports, which may be cost prohibitive for a stand-alone station.[44] Commonly owned entities will be better able to leverage their assets to provide immediate and short term coverage as well as to extend in depth coverage, reaction and analysis.

The increased resources derived from co-ownership could also result in the better use of developing technology to provide expanded service to the community. For example, co-owned entities could have linked or joint web sites to allow consumers to achieve faster access to a broad range of news topics including politics, the economy, sports, and entertainment, allowing better competition with other service providers.[45] Additionally, common ownership of a newspaper and a television station could have the same result as the relaxed duopoly rule in allowing a newspaper entity to strengthen a failing broadcast station and visa versa. The result is more, not less, media outlets in a given community. These cost savings, the resulting improved products, combined with competitive forces, would encourage other stations in the community to improve the delivery of their news and information services as well.[46]

The Commission's conclusions regarding the efficiencies and public interest benefits in the local television realm provide the Commission with the basis and rationale to also repeal the NBCO rule. The local television ownership and NBCO rules were based on the same underlying predicate and they affect equally similar forces in the media marketplace. In today's market, there is less evidence of possible harm to competition and diversity then when the Commission first

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[44] Chronicle Comments at 20 (discussing benefits from common ownership of the Chronicle newspaper and KRON-TV).

[45] Hearst Comments at 21; Chronicle Comments at 14 ("Comprehensive local websites as sources of original news and information, as well as 24-hour local cable channels, are examples of new media with enormous potential.")

[46] Gannett Comments at 24; Hearst Comments at 2.

adopted the NBCO or local television rules. To relax the television rules without changing the NBCO rule creates a dangerous inconsistency that will have the adverse effect of threatening the public interest goals of diversity and competition.

IV. THE BENEFITS THAT COMPANIES WILL OBTAIN FROM RELAXATION OF THE LOCAL TELEVISION OWNERSHIP RULES SHOULD BE AVAILABLE TO THE ENTIRE MARKETPLACE

The Commission is aware of the numerous proposed acquisitions made public since the announcement to relax the local television rules. The opportunities and improved product capabilities are endless. For example, as a result of its merger with CBS, Viacom reportedly plans to bundle various Internet services and spin them off, thereby making Internet packages cheaper for consumers.[47] Several smaller local companies also plan to take advantage of the new duopoly rules as well. Allbritton Communication has said that the new rules will allow it to exercise options to buy stations it operates under LMAs which it intends to do so.[48] Baltimore-based Sinclair Broadcasting indicates that it has recently received telephone inquiries from people looking to sell their stations.[49] In Kansas, television executives are looking to merge the St. Joseph and Kansas City markets.[50]

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[47] Jennifer Rewick, Mixing Viacom, CBS Web Interests May Be Tricky, Wall St. J., Sept. 8, 1999, at A8.

[48] Rob Stokes and Gerald McCubbin, Greatest Show on Earth, Scotland on Sunday, Sept. 12, 1999, at 5.

[49] Bigger Guys Are Going to Double Up With Duopolies, Comm. Daily, Aug. 16, 1999.

[50] Aaron Barnhart, Stations Look Ahead to Brave New World of Duopoly, Kansas City Star, Aug. 14, 1999, at E8. See NAA Emergency Petition at 9-10 for additional examples of recently proposed business deals resulting from relaxation of the local television rules.

It is important to note that this flurry of activity following the relaxation of the duopoly rule totally precludes involvement of the nation's newspapers. Without repealing the NBCO rule, the newspapers competing in the same media marketplace will continue to be treated in a discriminatory and unjustified manner.[51] Newspaper entities will be unable to utilize the same resources and economies of scale that co-owned broadcast stations will use to provide their products and services. This unfair market imbalance is not only unduly burdensome on the print media, but threatens the very efficiency and diversity in the marketplace that the Commission has so vigorously attempted to protect and enhance. By prohibiting newspaper entities and broadcast stations from co-ownership, the Commission is continuing to restrict their ability to provide competitive products in a marketplace that is now deregulating all around them.[52]

Indeed, Congress has historically recognized the importance of preserving and strengthening the nation's newspapers in the face of increased competition. In 1970, Congress enacted the Newspaper Preservation Act which blessed the existence of joint newspaper operating agreements by granting limited antitrust exemptions for such arrangements. In approving this legislation, Congress found that these joint newspaper operating agreements were helpful in creating "a method to reduce costs by combining the economic and business aspects of newspaper production, and at the same time, permitt[ing] the newspaper participants to maintain separate

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[51] See NAA Emergency Petition at 7-8, 10.

[52] Cox/Media General Comments at 27-29; see Hearst Comments at 23-25; NAA Emergency Petition at 14 (arguing that relaxation of local television rules without relaxation of NBCO is "patently arbitrary and unconstitutionally discriminatory."); Chronicle Comments at 7; Comments (Review of the Commission's Broadcast Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act), Tribune Company at 13, 1998 ("Tribune Comments").

editorial staff . . . and news policies.[53] Thus, as Congress recognized in 1970, and the Commission recognized in August of this year, cross or joint ownership in the media marketplace can result in a reduction of costs (and, therefore, the elimination of losses in the marketplace) while maintaining and spurring diversity and competition.[54] Disparate voices are preserved and enhanced instead of eliminated.

The Commission must recognize that the competitive factors affecting the success of the nation's newspapers existing in 1970 exist again in 1999. According to the Newspaper Association of America, the number of daily newspapers (including both morning and evening papers) in this country has dropped since the promulgation of the newspaper/broadcast cross-ownership rule in 1975 by 267 from 1,756 in 1975 to approximately 1,489 in 1998.[55] Circulation of the U.S. daily newspaper has remained steady since 1975 at between 56 million and 60 million.[56]

Although the daily newspaper industry remains vibrant today, it is clear that in the face of new and more active competition since the Commission's announcement in August, the industry is at risk of not being able to compete on equal footing. As Congress recognized almost three decades ago, not only are losses in the number of newspapers (and, therefore, voices) avoidable through joint arrangements between newspapers or newspapers and broadcasters, but such relationships are beneficial to the public interest.

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[53] H.R. Rep. No. 1193, 91st Cong., 2d Sess. (1970) reprinted in 1970 USCAAN 3547, 3548. In its Report, the House also recognized that the "failure or elimination of a weaker newspaper competitor necessarily reduced the availability to the public of diverse and independent editorial viewpoints and news policies." Id.

[54] Id. at 3549.

[55] The Newspaper Association of America, 1999 Facts About Newspapers at 11.

[56] Id. at 12.

The Commission's relaxation of the duopoly rule is based upon serving the public interest. Its action has spurred competition -- allowing radio and television stations to merge and negotiate with other stations in the hopes of increasing profits and providing better products for consumers. As the Commission established in its Report and Order, broadcasters compete in "numerous markets" -- and competition in these markets is flourishing, except with regard to the print media and its relationship to the broadcast industry.[57]

By deregulating only part of the communications industry, the Commission by its action has forced the nation's newspapers to the sidelines while its formidable competitors pass them by. Applying the same public interest standard the Commission used in August, and based on the record of the Biennial Review proceeding, the Commission should repeal the NBCO rule to allow newspaper and other broadcast entities to also benefit from the economies of scale and synergies available from co-ownership. With such action, all media entities in the marketplace can compete to provide a better product and service to the consumer. The Commission should not be in the business of favoring selected portions of the same industry in deregulatory policies. The Commission's responsibility is to let the marketplace pick winners and losers.

V. CONCLUSION

For the reasons set forth above, as well as those set forth by the NAA in its recent Emergency Petition, and the record presented in both the local television proceeding and the Biennial Review, it is the inescapable conclusion that the Commission should insure a level and competitive playing field by immediately repealing the newspaper/broadcast cross-ownership ban. Petitioners applaud the Commission's efforts thus far to relax its ownership rules and strongly

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[57] Report and Order, supra note 1, at 14-15.

encourage the Commission to continue its mission to create a competitive marketplace for all participants, and, likewise, to remove any remaining unfair and unduly burdensome barriers to compete.

Respectfully Submitted,

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